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November 13, 2015

Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463

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FEDERAL ELECTION COMMISSION
999 E STREET, N.W.
WASHINGTON, DC 20463
-OEC

Re: Response of Marco Rubio for President in MUR 6888

Dear Mr. Jordan,

This response to the Complaint designated Matter Under Review 6888 is submitted on behalf of Senator Marco Rubio, Marco Rubio for President, and Lisa Lisker, in her capacity as Treasurer of Marco Rubio for President, by the undersigned counsel. It is our understanding that American Democracy Legal Fund filed the initial complaint in this matter on or about October 15, 2014, and then filed a supplemental complaint naming additional respondents on or about October 28, 2014. Marco Rubio for President was not identified as a respondent in either the initial or supplement complaint. American Democracy Legal Fund then filed a Second Supplemental Complaint, of which Marco Rubio for President received notice from the Commission on September 14, 2015, followed by a revised notice on September 29, 2015. Marco Rubio for President did not receive copies of either the initial complaint or the (first) supplemental complaint from the Commission, although both are publicly available on American Democracy Legal Fund's website.

Marco Rubio for President is included as a named respondent in the Complainant's latest supplement because "according to to [sic] press reports, eleven authorized committees of Republican Presidential candidates have also entered into agreements with the Data Trust, i360, or both."¹ Second Supplemental Complaint at 5. Complainant's cited press reports, however, say no such thing. The referenced *Bloomberg* article reports that "11 of the party's presidential candidates have signed a

¹ The Second Supplemental Complaint refers to "GOP Data Trust LLC" as "Data Trust," and we do the same in this Response. Similarly, "i360, LLC" is abbreviated and referred to as "i360."

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data agreement *with the RNC*.² The cited *Washington Post* article indicates that “RNC officials ... already have signed list-exchange agreements with 11 presidential candidates.”³ Contrary to the Complainant’s assertions, the referenced articles very clearly indicate that the identified candidates entered into a “data agreement” or a “list-exchange agreement” *with the Republican National Committee (RNC)*. These articles do *not* report that the identified candidates entered into agreements with Data Trust or i360.

The Complainant’s inclusion of Marco Rubio for President as a respondent is premised entirely on Complainant’s intentional misrepresentation of the two news reports referenced above. The agreement described in those two reports is a list exchange agreement entered into by Marco Rubio for President and the RNC.

List Exchange with Republican National Committee

Marco Rubio for President has in place a list exchange agreement with the RNC, and has received general voter information and data from the RNC.

Data Trust and i360

Marco Rubio for President does not have any data agreement in place with Data Trust, has not received any information from Data Trust, and has not provided any information to Data Trust.

Marco Rubio for President does not have any data agreement in place with i360, has not received any information from i360, and has not provided any information to i360.

Complainant’s Allegations Do Not Support a Reason to Believe Finding

1. Allegation #1

The Complainant alleges that the Respondents (presumably all of them) are “making and receiving excessive, multi-million dollar contributions.” Second Supplemental Complaint at 1. The Complaint does not identify any specific transaction that constitutes an allegedly impermissible contribution to Marco Rubio for President. As the facts set forth above make clear, there is no such transaction.

² Sasha Issenberg, Why Isn’t Rand Paul Making a Data Deal With The GOP?, *Bloomberg* (July 24, 2015), <http://www.bloomberg.com/politics/articles/2015-07-24/why-isn-t-rand-paul-making-a-data-deal-with-the-gop>; (emphasis added).

³ Matea Gold, Koch network strikes new deal to share voter data with RNC-aligned firm, *Washington Post* (July 29, 2015), <http://www.washingtonpost.com/news/post-politics/wp/2015/07/29/koch-network-strikes-new-deal-to-share-voter-data-with-rnc-aligned-firm/>; (emphasis added).

2. Allegation #2

The Complainant also alleges that "at least eleven Republican candidates for President of the United States are now involved in the scheme to skirt the Commission's 'coordinated communications' regulations by passing their most valuable data to outside organizations via the GOP Data Trust and the Koch Brothers' data firm i360." Second Supplemental Complaint at 1. To the extent that a "coordination" violation is vaguely alleged, the Complainant's innuendo is premised entirely on its intentional misrepresentation of two news reports. Marco Rubio for President has *not* engaged in any transaction with the RNC, Data Trust, or i360 that could even support a valid coordinated communication claim. Marco Rubio for President has received general voter information from the RNC pursuant to a list exchange agreement, and the committee has *not* received or provided any information or data to Data Trust or i360.

The Commission's "coordination communication" regulation requires that three elements be satisfied. There must be (i) a communication that is paid for by a person other than the candidate; (ii) that communication must satisfy a content standard; and (iii) the candidate and payor must be linked by one of the conduct standards. See 11 C.F.R. § 109.21(a). With respect to Marco Rubio for President, the Complaint does not provide evidence that any of these three elements is satisfied. The Complaint does not identify a public communication that is paid for by a person other than the Marco Rubio for President, and which is allegedly the "coordinated communication." With no public communication identified, there can be no consideration of the content standards. Finally, assuming the Complainant's theory rests on the existence of a common vendor, no such vendor exists with respect to Marco Rubio for President. The Complainant's allegations are purely conclusory, and there is no evidence in the Complaint that would allow the Commission to even consider those conclusory allegations.

3. The Commission's Reason to Believe Standard Is Not Met

"The Commission may find 'reason to believe' only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the FECA. Complaints not based upon personal knowledge must identify a source of information that reasonably gives rise to a belief in the truth of the allegations presented. . . . Unwarranted legal conclusions from asserted facts . . . or mere speculation . . . will not be accepted as true." MUR 4960 (Clinton), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas at 1-2; MUR 5467 (Moore), First General Counsel's Report at 5 (quoting MUR 4960).

As explained above, the central allegation of Complainant's Second Supplemental Complaint – that "according to press reports, eleven authorized committees of Republican Presidential candidates have also entered into agreements with the Data Trust, i360, or both" – is simply incorrect. This is *not* what is reported in the referenced press reports. This fabricated allegation is the sole piece of "evidence" presented by Complainant with the respect to the named Presidential candidates, and without it, the Complainants would have no basis for even attempting to include the Republican

Presidential field in its ever-growing list of respondents. As noted, the referenced press reports indicate that certain Presidential campaign committees entered into list exchange agreements with the Republican National Committee. There is nothing illegal or improper about list exchange agreements. Accordingly, the Complainant's "asserted facts" are untrue, and what remains does not "constitute a violation of the FECA." MUR 4960 (Clinton), Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas at 1-2.

"The RTB standard does not permit a complainant to present mere allegations that the Act has been violated and request that the Commission undertake an investigation to determine whether there are facts to support the charges." MUR 6056 (Protect Colorado Jobs, Inc.), Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn at 6, n.12. "[O]pening an investigation to determine whether we could discover a basis for those suspicions runs counter to the statutory constraints imposed on the Commission." MUR 6296 (Buck), Statement of Reasons of Vice Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen at 4.

Finally, "under the Act, before making a reason-to-believe determination, the Commission must assess both the law and the credibility of the facts alleged. To do so, the Commission must identify the sources of information and examine the facts and reliability of these sources to determine whether they 'reasonably [give] rise to a belief in the truth of the allegations presented.' Only if this standard is met may the Commission investigate whether a violation occurred." MUR 6371 (O'Donnell), Statement of Reasons of Vice Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen at 4; *see also* MUR 6296 (Buck), Statement of Reasons of Vice Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen at 5-6.

For the reasons set forth above, the Complaint against Senator Marco Rubio, Marco Rubio for President, and Lisa Lisker, in her capacity as Treasurer of Marco Rubio for President, should be dismissed as expeditiously as possible.

Sincerely,



Thomas J. Josefiak

Michael Bayes

Counsel to Marco Rubio for President